

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RODNEY STEVEN MITUNIEWICZ,

Plaintiff,

v.

HAROLD CLARK,

Defendant,

Case No. C06-5383RBL

REPORT AND
RECOMMENDATION

**NOTED FOR:
OCTOBER 13TH, 2006**

This 42 U.S.C. § 1983 Civil Rights has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. This action was filed in July of 2006. (Dkt. # 1). The complaint violates Fed. R. Civ. P. 8 (a) and plaintiff was ordered to file an amended complaint. (Dkt. # 8). Plaintiff was given until September 1st, 2006 to comply with the court's order and he has failed comply. As of September 15th nothing has been filed.

Plaintiff has not complied with the court's order to amend. The court recommends the action be **DISMISSED WITH PREJUDICE** for the reasons stated in the order to amend and for failure to comply with a court order. (Dkt. # 8). A proposed order accompanies this Report and Recommendation. This dismissal will count as a strike under 28 U.S.C. 1915 (g).

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the

1 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.
2 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.
3 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to
4 set the matter for consideration on **October 13th, 2006**, as noted in the caption.

5
6 DATED this 18th day of September, 2006.

7
8 /S/J. Kelley Arnold
9 J. Kelley Arnold
United States Magistrate Judge